RECORD
AND
BRIEFS

No. 16-348

In the Supreme Court of the United States

MIDLAND FUNDING, LLC, PETITIONER

v.

ALEIDA JOHNSON

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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This is the extremely rare case in which both petitioner and respondent agree not only that the questions presented implicate clear circuit conflicts on important issues of federal law, but also that the case is an excellent vehicle for addressing those questions. See Resp. Br. 7. The Court should heed the mutual request from creditors and debtors to resolve the discord concerning whether a debtor can sue a creditor under the Fair Debt Collection Practices Act (FDCPA) for filing an accurate proof of claim for a time-barred debt in a bankruptcy proceeding.

This case is the optimal vehicle in which to provide the clarity creditors and debtors need, because it squarely presents both of the closely related legal questions necessary to resolve that recurring real-world question.

1. Respondent agrees with petitioner that there is a clear and intractable circuit conflict on each of the questions presented in this case: whether the filing of an accurate proof of claim for an unextinguished time-barred debt in a bankruptcy proceeding violates the FDCPA, and whether the Bankruptcy Code precludes such an application of the FDCPA. See Resp. Br. 2. As respondent acknowledges, the Eleventh Circuit's decision in this case and its previous decision in *Crawford* v. *LVNV Funding, LLC*, 758 F.3d 1254 (2014), cert. denied, 135 S. Ct. 1844 (2015), conflict with decisions from the Second, Fourth, Seventh, Eighth, and Ninth Circuits addressing those questions. See Resp. Br. 2-6. Although respondent would characterize the Second Circuit's decision in *Simmons* v. *Roundup Funding, LLC*, 622 F.3d 93 (2010), as more directly implicating the Bankruptcy Code preclusion question than the FDCPA interpretation question, see Resp. Br. 5 & n.3, the fact that the court's reasoning in that case is amenable to either interpretation merely underscores the close relationship between the two questions, and conflicts, presented.

Respondent also agrees with petitioner that the questions presented are of exceptional legal and practical importance and are ripe for this Court's review. See Resp. Br. 3, 6-7 & n.5. Despite representing competing interests in bankruptcy and FDCPA proceedings, creditors and debtors alike thus recognize the urgent need for the Court's intervention to resolve the disuniformity among the lower courts on these significant questions.

2. In light of the parties' agreement that the questions presented here are "ideally addressed in tandem,"

Resp. Br. 7, the Court should grant review in this case. This is the only case in which both questions were unambiguously pressed in the court of appeals, passed upon by that court, and raised in the petition for a writ of certiorari. See Pet. 18; Resp. Br. 7-8.

As respondent notes, a petition for certiorari is also pending in *Owens* v. *LVNV Funding, LLC*, No. 16-315 (filed Aug. 26, 2016), which presents the first of the two questions presented in this case. The Court may wish to grant the petition for certiorari in *Owens* in addition to this one and consolidate the cases, though that approach would require realignment of the parties for purposes of briefing and oral argument. In that event, the respondents in *Owens* could advance the Bankruptcy Code preclusion argument as an alternative ground for affirmance, assuming that they adequately preserved that argument before the court of appeals. Cf. Resp. Br. 8. In the alternative, the Court may simply wish to hold the *Owens* petition pending resolution of both questions presented in this case. In either event, however, the petition for a writ of certiorari in this case should be granted.

Respectfully submitted.

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